

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

**IN THE MATTER OF A  
SUSPENDED MEMBER OF THE  
STATE BAR OF ARIZONA,**

**ERIC P. MALLOFF,  
Bar No. 034180**

Respondent.

**PDJ-2020-9117**

**DECISION AND ORDER OF  
REPRIMAND**

[State Bar No. 20-2660-N]

**FILED JANUARY 7, 2021**

A Notice of Non-Compliance with terms of probation was filed on December 7, 2020 pursuant to Rule 60(a)(5)(C), Ariz. R. Sup. Ct. No response was filed by Mr. Malloff. A hearing was ordered. On January 7, 2021 an approximate forty-five-minute audio recorded hearing was held before the Presiding Disciplinary Judge (“PDJ”) with Staff Bar Counsel Bradley F. Perry and self-represented Eric. P. Malloff.

***Prefatory Facts***

On April 17, 2020, the Attorney Discipline Probable Cause Committee, (“ADPCC”) issued an Order of Admonition with Probation (“Order”) for the misconduct of Mr. Malloff. [Ex. 1.] ADPCC admonished Mr. Malloff for violating Rule 42, ERs 1.1, 1.3, 1.4, 1.5, 1.16, 3.2, 8.1(b) and (d). The Order immediately placed Mr. Malloff on probation for two years. The Order included a warning that

his failure to comply with the terms could cause an additional sanction being entered against him.

The Order informed Mr. Malloff that pursuant to Rule 55(c)(4)(B), Ariz. R. Sup. Ct., he had a right to demand a formal proceeding be instituted and the Order of Admonition would be vacated. Mr. Malloff made no such demand and the Order became final. Mr. Malloff was aware of the terms and requirements of the Order as discussed hereinafter. He knew his obligations to adhere to the same.

Mr. Malloff was ordered to pay costs of \$1,340.96 to the State Bar within thirty days from the service of the Order. He failed to do so and there is no record that he sought additional time or relief. As a term of his probation Mr. Malloff was ordered to contact the State Bar Compliance Monitor (“Monitor”) within 10 days of the April 17, 2020. He was obligated to schedule and submit to the State Bar’s, Law Office Management Assistance Program (“LOMAP”) evaluation. He was also ordered to schedule and submit to an assessment with the Member Assistance Program (“MAP”). He failed to do these and there is no record that he sought additional time or relief. These were all violations of his probation.

### ***Findings of Fact***

Mr. Malloff knew the requirements of the ADPCC Order but did not contact the Monitor. More than thirty days later Mr. Malloff had failed to meet any of the requirements of the Order. As a result, on May 20, 2020, the Monitor emailed Mr.

Malloff to remind him of these various obligations. She warned that if he did not get his evaluation and assessment done within ten days he would be referred to bar counsel for non-compliance. [Ex. 2.] Mr. Malloff did not respond for two weeks. On June 4, 2020, Mr. Malloff confirmed his receipt of that email. He wrote, “I am first seeing this message now. I have not had time to review but will do so first thing tomorrow morning and confirm with you after the requisite steps have been taken. [Id.] Mr. Malloff had actual knowledge of the terms of the Order and the requisite steps he had to take to comply with the Order. His failure to timely contact the Monitor was a violation of his probation.

On August 14, 2020, the Monitor emailed Mr. Malloff confirming a conversation they had. She informed Mr. Malloff in that email that his LOMAP terms were attached and that they required that he submit quarterly reports to her. She confirmed his statements to her that he would let her know when the MAP evaluation was re-scheduled and if there were any issues. Mr. Malloff did not respond to that email. [Ex. 3.] The terms of Probation attached to that email are identical to Exhibit 4 except for the signature. Mr. Malloff did not timely sign them nor did he timely schedule a MAP evaluation or inform her of any scheduled evaluation. These shortfalls by him are violations of his probation.

Thirty days later, the SBC Monitor emailed Mr. Malloff again on September 14, 2020 stating “I sent you these terms in August and haven’t heard back. Also, the

quarterly report is due September 30, 2020.” Mr. Malloff knew he still had not signed his LOMAP terms nor scheduled his MAP evaluation. [Id.] These were further violations of the Order and his probation.

Mr. Malloff informed the SBC Monitor he was not practicing law because of a summary dues suspension. The LOMAP evaluation was postponed until he re-entered practice. [Ex. at Bates, 000025, at ¶ 5.]

More than a month after he had received them Mr. Malloff signed the terms of LOMAP on September 25, 2020. Included within those terms was a requirement he submit quarterly reports affirming he was not in practice. In returning his signed terms of LOMAP he stated that he was not practicing. [Id.; Ex. 4 at Bates 000019, (E)(1).]

At some point, Mr. Malloff finally scheduled his MAP evaluation with Dr. Lett which was set for August 12, 2020. Mr. Malloff was contacted by the office of Dr. Lett to conform his appointment. Mr. Malloff informed Dr. Lett’s office that he was in the hospital with MRSA and would be discharged August 8, 2020. Mr. Malloff was told to re-schedule to allow time for complete healing. Angry at the cancellation Mr. Malloff hung up rather than re-schedule. [Ex. 5; Ex. 6 at Bates 000026 at ¶ 11.] At the hearing Mr. Malloff did not dispute this. He stated he called the office of Dr. Lett some days after that and left messages twice. He also testified that he had a bicycle accident that hospitalized him cumulatively for about thirty

days over the course of a few months. In the hearing Mr. Malloff stated that he wanted a telephonic evaluation with Mr. Malloff. From this it can be fairly concluded that he had the ability to meet any payment requirements for that evaluation.

Regardless, it is uncontested that from those unspecified dates of telephone calls Mr. Malloff testified he made, he affirmed that he never checked his emails and made no other efforts to bring himself into compliance with any terms of the Order for months thereafter. At the hearing, he stated he could obtain the funds necessary to pay for the evaluation and schedule it as early as within one week. There was no explanation for his delay other than his stated belief that his two-year probation time was running from the date of the original Order.

### ***Allegation of Non-Compliance***

Under Rule 60(a)(5)(C), Ariz. R. Sup. Ct., the State Bar monitors and supervises a respondent placed on terms of probation. That rule requires that, “Bar counsel shall report material violations of the terms of probation to the presiding disciplinary judge (“PDJ”) by filing a notice of noncompliance with the disciplinary clerk and serving respondent with a copy of the notice.”

On December 7, 2020, the State Bar filed notice of the non-compliance (“Notice”) with those agreed upon terms of probation by Eric P. Malloff, Bar No. 034180. Mr. Malloff was sent a copy of the notice. Under Rule 60(a)(5)(C),

“[r]espondent shall have ten days after service of the notice to file a response.” Mr. Malloff filed no response.

The Notice was supported by the written personal declaration of State Bar Compliance Monitor Yvette Penar (“Ms. Penar.”). [Ex. 6.] Having considered the notice with attachments, the PDJ issued on December 9, 2020 an order pursuant to Rule 60(a)(5)(C), setting this matter for hearing. The purpose for the hearing as stated in Rule 60(a)(5)(C) is “to determine if the terms of probation have been violated and if an additional sanction should be imposed.”

### *The Hearing*

The Chief Justice by Administrative Order authorized and directed the use of technologies to eliminate or limit in-person contact in the conduct of court proceedings. Due to COVID-19 concerns, the hearing proceeded telephonically.

On January 7, 2021, an audio recorded hearing was held before the presiding disciplinary judge. Staff Bar Counsel Bradley F. Perry appeared on behalf of the State Bar. Mr. Malloff appeared, and his testimony was summarized above.

### *Additional Findings of Fact*

1. Eric P. Malloff, Bar No. 034180, is an attorney licensed in Arizona whose license remains suspended for failure to pay his State Bar dues.

2. Mr. Malloff was issued an admonition and placed on two years of probation under LOMAP and MAP on April 17, 2020 by the Attorney Discipline

Probable Cause Committee in State Bar No. 19-1105. Mr. Malloff violated Rule 42, ERs 1.1, 1.3, 1.4, 1.5, 1.16, 3.2, 8.1(b) and (d).

3. Mr. Malloff was ordered to contact the State Bar Compliance Monitor within ten (10) days from the date of the ADPCC Order to schedule a LOMAP assessment and MAP evaluation. Mr. Malloff failed to do so. Mr. Malloff failed to timely sign his terms of LOMAP terms of probation. Mr. Malloff failed to timely schedule a MAP evaluation with Dr. Lett. Mr. Malloff failed to respond to inquiries of Ms. Penar the Monitor. Mr. Malloff failed to submit quarterly reports as required under his LOMAP terms of probation. These all were knowing violations of his terms of probation.

4. Central to the terms of probation was the conscious purpose to determine if Mr. Malloff could demonstrate the ability to exercise self-control enough to complete the tasks assigned to him.

5. Mr. Malloff by his signature to the terms of probation acknowledged that he knew that his failure to abide by any of those terms would constitute a violation of these terms” of probation. [Ex. 4 at Bates 00002, II and III.]

6. The American Bar Association’s *Standards for Imposing Lawyer Sanctions*. (“Standards”) form an integral part of the analysis for this case.

The purpose of lawyer discipline proceedings is to protect the public and the administration of justice from lawyers who have

not discharged, will not discharge, or are unlikely properly to discharge their professional duties to clients, the public, the legal system, and the legal profession. [*Standards* at p. 13, A 1.1.]

*Standard 2.3* states, “Generally, suspension should be for a period of time equal to or greater than six months...” “Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty as a professional and causes injury...to the legal system.

7. Each of these probation violations are serious because they are violations of prior disciplinary order and were done knowingly if not intentionally.

### ***General Findings***

Under Article VI, Section 3 of the Arizona Constitution, the Supreme Court of Arizona has jurisdiction over the regulation of attorneys licensed in Arizona. Pursuant to Rule 31, Ariz. R. Sup. Ct., any person engaged in the practice of law in Arizona is subject to the jurisdiction of the Court. Pursuant to Rule 46 and 49 Ariz. R. Sup. Ct. any lawyer admitted to practice law in Arizona is subject to the disciplinary jurisdiction of the Court and the authority delegated to the State Bar of Arizona. Pursuant to Rule 51 the PDJ has the authority to impose discipline on an attorney in accordance with the Ariz. R. Sup. Court Rules.

This judge reviewed in detail with Mr. Malloff the potential consequences of his continued failure to adhere to the terms and the differences and deadlines



involved in his continued failing to put himself in a position to be reinstated by the Board under Rule 64(f)(1)(A) or the formal process and difficulties of reinstatement under Rule 64(f)(1)(B) which requires a formal petition for reinstatement before the PDJ under Rule 65.

The State Bar recommended continued terms of probation that include agreed upon requirements for him to meet before he could apply for reinstatement. Both parties agreed and this court elects to reprimand rather than suspend.

### **RULING**

**IT IS ORDERED** finding **ERIC P. MALLOFF Bar No. 034180** has knowingly violated his terms of probation in multiple and material ways and an additional sanction is warranted.

Mr. Malloff continues be a risk to the public with the potential to injure clients, the legal profession, and the legal system by his failure to adhere to his probation. No good cause for those failings were presented.

Now Therefore,

**IT IS ORDERED** reprimanding **ERIC P. MALLOFF Bar No. 034180**. As a condition of any reinstatement Mr. Malloff shall upon reinstatement serve two years of LOMAP probation under the updated terms of probation at Exhibit 4.

**IT IS FURTHER ORDERED** placing Mr. Malloff on probation for up to an additional one-year, a central term of which shall include within one week he

schedules his MAP evaluation with Dr. Lett, timely complete that evaluation and before applying for reinstatement he shall have paid all ordered costs and adhered to any terms of MAP probation arising from that Dr. Lett evaluation.

**IT IS FURTHER ORDERED** Mr. Malloff shall pay any costs and expenses of the State Bar of Arizona as ordered under Rule 60(b), Ariz. R. Sup. Ct.

**DATED** this 7<sup>th</sup> day of January 2021.

*William J. O'Neil*  
**William J. O'Neil, Presiding Disciplinary Judge**

COPY of the foregoing e-mailed/mailed  
this 7<sup>th</sup> day of January 2021 to:

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Respondent

by: MSmith